IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 17TH DECEMBER 2007 / 26TH AGRAHAYANA 1929

Bail Appl..No. 7785 of 2007()

CRIME 354/07 OF KODUVALLY POLICE STATION

PETITIONERS/ACCUSED

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1. APPACHAN (THOMAS M.J.),S/O. JOB
   MATTATHIL VEEDU, CHAMMARUTHAYI DESOM
   KOODATHAI AMSOM, MAIKKAVU PO,
   VAZHITHAMARASSERY (VIA) PIN 673573, KOZHIKODE

2. I.P.MOOSAKUTTY, S/O. SULAIMAN
   EATTINIYAMPARAIKKAL VEEDU, PUTHOOR AMSOM
   KEDAYATHOOR DESOM, PUTHOOR PO,
   KODUVALLY (VIA) PIN 673 572.

3. MATHYAS XAVIER,S/O. P.I.SAURI,
   SIBINI VEEDU, KOODATHAYI AMSOM, DESOM
   KOODATHAYI BAZAR, THAMARASSERY (VIA)
   PIN 673 523, KOZHIKODE.

4. M.T.MUHAMMED,S/O. CHEKUTTY
   MUTHUVANATHODIKA VEEDU, PUTHOOR AMSOM
   CHOKOOR DESOM, OMASSERY PO, PIN 673 572
   KODUVALLY, KOZHIKODE.

5. GIRI P.R.,S/O. RAGHAVAN, PAMBANAL VEEDU
   SANTHINAGAR PO, PIN 673 573, THAMARASSERY (VIA)
   KOODATHAYI AMSOM, CHEMMARUTHAYI DESOM
   KOZHIKODE.

6. AUGUSTINE JOSEPH,S/O. JOSEPH
   KANNEZHATHU VEEDU,KOODATHAYI AMSOM,
   CHEMMARUTHAYI DESOM ,SANTHINAGAR PO,
   THAMARASSERY (VIA)PIN 673 573,KOZHIKODE.

7. K.V.BENNY (JOSEPH)S/O. VARGHESE
KARIPPUKATTIL VEEDU,KOODATHAYI AMSOM,
KOODATHAYI BAZAR PO,
THAMARASSERY PIN 673 573,KOZHIKODE.

8. P.K.GANGADHARAN, S/O. KRISHNANKUTTY NAIR
PULPARAMBIL VEEDU, PUTHOOR AMSOM DESOM,
OMASSERY P.O., KODUVALLY (VIA)
PIN 673 572, KOZHIKODE.

9. M.C.GOPALAN,S/O. MAYYON,MUDAVACHALIL
VEEDU, PUTHOOR AMSOM,VENNAKODE DESOM,
KODUVALLY (VIA) PIN 673 572, KOZHIKODE.

10. P.PRAKASAN,S/O,. CHEKKU,
KAVILAMPARIKKAL VEEDU, PUTHOOR AMSOM,
VENNAKODE DESOM,
KODUVALLY (VIA) PIN 673 572, KOZHIKODE.

BY ADV. SRI.N.JAMES KOSHY
SRI.T.SANJAY

RESPONDENTS: COMPLAINANT/STATE

STATE OF KERALA,REPRESENTED BY THE
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR ADV.SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 17/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 7785 OF 2007

Dated this the 17th day of December, 2007

O R D E R

Application for anticipatory bail. Petitioners are accused Nos.1 to 10. They face allegations for offences punishable, inter alia, under Section 353 IPC and Section 3(2) of the P.D.P.P. Act. The crux of the allegations against the petitioners is that they were members of an unlawful assembly of persons, who exceeded their legitimate assignment of demonstration before Omassery Panchayat to show their protest against the failure of the Panchayat to shift to a new building. They allegedly entered the Panchayat building and indulged in gross acts of mischief and violence including pulling down and tearing of official files which were available in the premises. The alleged incident took place on 3.12.07 at 9.30 a.m. By 2.30 p.m. a formal complaint was filed before the police and the crime was registered. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the allegations are totally false and incorrect. Because of political animosity such false allegations are being raised. A peaceful demonstration is now described to be an act of lawlessness. The petitioners may, in these circumstances, be granted anticipatory bail. They may be saved of the trauma of arrest and incarceration, submits the learned counsel for the petitioners.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that while the State does not and could not have any objection against peaceful demonstrations being held, the lawless acts of entering the premises of an office and indulging in gross acts of violence including pulling down the files and tearing them must be frowned upon in any orderly society. There are no circumstances justifying or warranting the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. The petitioners may be directed to appear before the

investigating officer or the learned Magistrate having jurisdiction and then seek regular bail in the normal and ordinary course. The learned Public Prosecutor has placed the case diary before me. The learned Public Prosecutor draws my attention to the seizure mahazar which eloquently declares the nature of the contumacious culpable acts that were committed in the building as alleged by the prosecution.

4. I have considered all the relevant inputs. I have perused the case diary. While the right to descent and stage protests and demonstrations were fundamental and basic in any democratic polity, acts of lawlessness and violence must be frowned upon by any society wedded to rule of law. The available indications clearly show the acts of violence and mischief that have taken place inside the premises. I am certainly of the opinion that the gravity and seriousness of the offence must weigh with the Court while considering the application for anticipatory bail. I am satisfied that there are no features in this case which would justify the invocation of

the extraordinary equitable discretion under Section 438 Cr.P.C. This, I agree with the learned Public Prosecutor, is a fit case where the petitioners must appear before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail in the normal and ordinary course.

5. In the result, this petition is dismissed. Needless to say, if the petitioners surrender before the investigating officer or the learned Magistrate and apply for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

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